

HB1143\_L.002

## HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Finance.HB13-1143 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 39-22-109, add  
4 (2.5) as follows:

5 **39-22-109. Income of a nonresident individual for purposes of**  
6 **Colorado income tax.** (2.5) (a) COMPENSATION THAT, BUT FOR THE  
7 EXCEPTION FROM THE WITHHOLDING REQUIREMENT SET FORTH IN SECTION  
8 39-22-604.1, WOULD BE SUBJECT TO WITHHOLDING UNDER SECTION  
9 39-22-604 AND THAT IS RECEIVED BY A NONRESIDENT INDIVIDUAL FOR  
10 EMPLOYMENT DUTIES PERFORMED IN THIS STATE IS NOT INCOME DERIVED  
11 FROM SOURCES WITHIN COLORADO IF THE NONRESIDENT INDIVIDUAL IS  
12 PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES FOR NOT MORE  
13 THAN THIRTY DAYS DURING THE TAX YEAR IN WHICH THE COMPENSATION  
14 IS RECEIVED, WHERE PRESENCE IN THIS STATE FOR ANY PART OF A DAY  
15 CONSTITUTES PRESENCE FOR THAT DAY UNLESS SUCH PRESENCE IS PURELY  
16 FOR PURPOSES OF TRANSIT THROUGH THE STATE.

17 (b) THIS SUBSECTION (2.5) DOES NOT APPLY TO COMPENSATION  
18 RECEIVED BY:

19 (I) AN INDIVIDUAL WHO IS A PROFESSIONAL ATHLETE OR A  
20 MEMBER OF A PROFESSIONAL ATHLETIC TEAM IF THE COMPENSATION IS  
21 PAID FOR SERVICES RENDERED IN HIS OR HER CAPACITY AS A  
22 PROFESSIONAL ATHLETE;

23 (II) A PROFESSIONAL ENTERTAINER WHO PERFORMS SERVICES IN  
24 THE PROFESSIONAL PERFORMING ARTS IF THE COMPENSATION IS PAID FOR  
25 SERVICES RENDERED IN HIS OR HER CAPACITY AS A PROFESSIONAL  
26 ENTERTAINER; OR

27 (III) AN INDIVIDUAL OF PROMINENCE WHO PERFORMS SERVICES  
28 FOR COMPENSATION ON A PER-EVENT BASIS IF THE COMPENSATION IS PAID  
29 FOR SERVICES PROVIDED AT A DISCRETE EVENT IN THE NATURE OF A  
30 SPEECH, PUBLIC APPEARANCE, OR SIMILAR EVENT.

31 (c) THIS SUBSECTION (2.5) CREATES AN EXCLUSION FROM  
32 COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME FOR  
33 NONRESIDENT COMPENSATION UNDER CERTAIN DE MINIMUS  
34 CIRCUMSTANCES AND DOES NOT AFFECT THIS STATE'S JURISDICTION TO  
35 IMPOSE INCOME TAX OR ANY OTHER TAX ON ANY TAXPAYER.

36 **SECTION 2.** In Colorado Revised Statutes, 39-22-601, amend  
37 (1) (a) as follows:

1           **39-22-601. Returns.** (1) (a) (I) Whenever a resident individual  
2 or a nonresident individual with income from Colorado sources is  
3 required to file a federal income tax return under the provisions of section  
4 6012 of the internal revenue code or whenever a resident individual or a  
5 nonresident individual has incurred any tax liability under any provision  
6 of this article, the individual shall make a return that shall contain a  
7 written declaration that it is made under the penalty of perjury in the  
8 second degree. The return shall set forth, in such detail as the executive  
9 director shall prescribe by regulations, the said individual's federal taxable  
10 income, the deductions, modifications, exemptions, and credits required  
11 or allowed under this article, and any other information necessary to carry  
12 out the purposes of this article. For the purpose of this section, the  
13 residence of the individual taxpayer shall be the address supplied by the  
14 taxpayer to the department of revenue on the return.

15           (II) (A) FOR PURPOSES OF THIS PARAGRAPH (a), A NONRESIDENT  
16 INDIVIDUAL WHOSE ONLY SOURCE OF INCOME FROM THIS STATE IS  
17 COMPENSATION THAT IS EXCLUDED FROM COLORADO NONRESIDENT  
18 FEDERAL ADJUSTED GROSS INCOME UNDER SECTION 39-22-109 (2.5) HAS  
19 NO TAX LIABILITY UNDER THIS ARTICLE AND NEED NOT FILE A RETURN.

20           (B) THIS SUBPARAGRAPH (II) APPLIES ONLY TO THE  
21 DETERMINATION OF AN INDIVIDUAL INCOME TAXPAYER'S FILING  
22 REQUIREMENT AND DOES NOT AFFECT THE IMPOSITION OF, OR THIS STATE'S  
23 JURISDICTION TO IMPOSE, INCOME TAX OR ANY OTHER TAX ON ANY  
24 TAXPAYER.

25           **SECTION 3.** In Colorado Revised Statutes, **add** 39-22-604.1 as  
26 follows:

27           **39-22-604.1. Withholding tax - nonresident income subtracted**  
28 **from federal taxable income - exception to requirement to withhold.**

29           (1) (a) NO AMOUNT IS REQUIRED TO BE DEDUCTED OR WITHHELD FROM  
30 COMPENSATION PAID TO A NONRESIDENT INDIVIDUAL FOR EMPLOYMENT  
31 DUTIES PERFORMED IN THIS STATE IF THE COMPENSATION IS EXCLUDED  
32 FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS INCOME  
33 UNDER SECTION 39-22-109 (2.5) OR IF THE COMPENSATION WOULD BE  
34 EXCLUDED FROM COLORADO NONRESIDENT FEDERAL ADJUSTED GROSS  
35 INCOME PURSUANT TO SAID SECTION BUT FOR THE FACT THAT THE  
36 NONRESIDENT INDIVIDUAL HAS OTHER INCOME RECEIVED FOR  
37 EMPLOYMENT DUTIES PERFORMED IN THIS STATE. THE NUMBER OF DAYS  
38 THAT A NONRESIDENT EMPLOYEE IS PRESENT IN THIS STATE FOR PURPOSES  
39 OF SECTION 39-22-109 (2.5) (a) (II) INCLUDES ALL DAYS THAT THE  
40 NONRESIDENT EMPLOYEE IS PRESENT AND PERFORMING MORE  
41 EMPLOYMENT DUTIES IN THE STATE THAN IN ANY OTHER STATE ON BEHALF

1 OF ANY EMPLOYER.

2 (2) AN EMPLOYER THAT HAS ERRONEOUSLY APPLIED THE  
3 EXCEPTION SET FORTH IN SUBSECTION (1) OF THIS SECTION SOLELY AS A  
4 RESULT OF MISCALCULATING THE NUMBER OF DAYS THAT A NONRESIDENT  
5 EMPLOYEE IS PRESENT IN THIS STATE TO PERFORM EMPLOYMENT DUTIES  
6 IS NOT SUBJECT TO ANY PENALTY FOR FAILURE TO WITHHOLD INCOME  
7 TAXES THAT COULD OTHERWISE BE IMPOSED UNDER ANY PROVISION OF  
8 THIS ARTICLE OR ARTICLE 21 OF THIS TITLE IF THE EMPLOYER RELIED ON  
9 THE EMPLOYEE'S ANNUAL DETERMINATION OF HIS OR HER TIME SPENT IN  
10 THE STATE PERFORMING EMPLOYMENT DUTIES AND DID NOT HAVE ACTUAL  
11 KNOWLEDGE OF FRAUD BY THE EMPLOYEE IN MAKING THE DETERMINATION  
12 OR COLLUDE WITH THE EMPLOYEE TO EVADE TAX; EXCEPT THAT, IF THE  
13 EMPLOYER, AT ITS SOLE DISCRETION, MAINTAINS A TIME AND ATTENDANCE  
14 SYSTEM THAT TRACKS WHERE THE EMPLOYEE PERFORMS DUTIES ON A  
15 DAILY BASIS, THE EMPLOYER MUST RELY ON THAT SYSTEM RATHER THAN  
16 ON THE EMPLOYEE'S DETERMINATION. FOR PURPOSES OF THIS SUBSECTION  
17 (2), "TIME AND ATTENDANCE SYSTEM" MEANS A SYSTEM THAT:

18 (a) REQUIRES AN EMPLOYEE TO CONTEMPORANEOUSLY RECORD  
19 HIS OR HER LOCATION FOR EVERY DAY WORKED OUTSIDE OF THE STATE IN  
20 WHICH HE OR SHE PRIMARILY PERFORMS HIS OR HER EMPLOYMENT DUTIES;  
21 AND

22 (b) ALLOWS AN EMPLOYER TO ALLOCATE AN EMPLOYEE'S WAGES  
23 FOR INCOME TAX PURPOSES AMONG ALL STATES IN WHICH THE EMPLOYEE  
24 PERFORMS EMPLOYMENT DUTIES FOR THE EMPLOYER.

25 (3) THIS SECTION ESTABLISHES AN EXCEPTION TO WITHHOLDING  
26 AND DEDUCTION REQUIREMENTS AND DOES NOT AFFECT THE IMPOSITION  
27 OF, OR THIS STATE'S JURISDICTION TO IMPOSE, INCOME TAX OR ANY OTHER  
28 TAX ON ANY TAXPAYER.

29 **SECTION 4. Act subject to petition - effective date -**  
30 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following  
31 the expiration of the ninety-day period after final adjournment of the  
32 general assembly (August 7, 2013, if adjournment sine die is on May 8,  
33 2013); except that, if a referendum petition is filed pursuant to section 1  
34 (3) of article V of the state constitution against this act or an item, section,  
35 or part of this act within such period, then the act, item, section, or part  
36 will not take effect unless approved by the people at the general election  
37 to be held in November 2014 and, in such case, will take effect on the  
38 date of the official declaration of the vote thereon by the governor.

39 (2) This act applies to income received by a nonresident of this  
40 state for employment duties performed in this state during income tax  
41 years that commence on or after January 1, 2014."

1 Page 1, strike lines 101 and 102 and substitute:

2 "CONCERNING TAXATION OF THE INCOME OF INDIVIDUALS WHO ARE  
3 NOT COLORADO RESIDENTS BUT WHO RECEIVE COMPENSATION FOR  
4 EMPLOYMENT DUTIES PERFORMED IN COLORADO,".

5 Page 1, line 106, strike "NONRESIDENT" and substitute "SUCH".

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